III. REMARKS

Claims 1-4, 6-8, 10-12, 14-19, 21-23, 25-27 and 29-31 are pending in this action. By this Amendment, claims 1, 7, 8, 16, 23, 30 and 31 have been amended. The amendments and cancellations are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the above amendments and following remarks is respectfully.

In the Office Action, claims 1-4, 6-7, 23, 25-27 and 29-30 are rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 1-4, 6-8, 10-12, 14-19, 21-23, 25-27 and 29-31 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Eden (US Publ. No. 2002/0184361) in view of Peterson et al. (US Publ. No. 2004/0010584), hereinafter "Peterson", and in further view of Asano et al. (US 2003/0208599), hereinafter "Asano." Applicants respectfully request withdrawal of the rejections.

Applicants would like to thank Examiner Recek for his time in discussing the Office Action and clarifying Applicants' questions regarding rejections contained therein. Portions of that discussion are reflected in the Amendments and Remarks.

With respect to claim rejections under 35 USC 101, the Federal Circuit, in *In Re Bilski*, outlined a two pronged analysis as the sole test for determining whether a process is directed to patentable subject matter. Under the first prong, a process is directed to patentable subject matter if it is tied to a particular machine or apparatus. *In Re Bilski*, No. 2007-1130, Slip Op. at

p. 10 (Fed. Cir. Oct. 30, 2008). Under the second prong, a process is directed to patentable subject matter if it transforms a particular article into a different state or thing. *Id.* In the analysis under the second prong, the particular article can be a physical object or substance or an electronic signal representative of a physical object or substance. *Id.* at p. 28.

Applying the *Bilski* test to claim 1, Applicants respectfully submit that the claimed invention qualifies as patentable subject matter as being directed to a process that is tied to a particular machine or apparatus. Specifically, the "computer-implemented" method of claim 1 includes, "providing at least one computing device for performing..." (Claim 1, and similarly recited in claim 23). This "computing device" of claim 1 is a machine capable of performing the process described therein, and as such, is drawn to statutory subject matter. Accordingly, Applicants respectfully request withdrawal of the rejection.

Applicants hereby incorporate the arguments made above with respect to rejections of claim 1 under 35 USC 101, to claim 23. Claim 23 similarly recites a "computer-implemented" method including, "providing at least one computing device for performing..." (Claim 23). For reasons that should be clear from the discussion of claim 1 above, Applicants respectfully request withdrawal of the rejections.

With respect to the rejection of claim 1 under 35 USC 103(a), Applicants respectfully submit that the references, taken alone or in combination, fail to disclose each and every feature of the claims. Specifically, not one of Eden, Peterson nor Asano disclose, "...a standard deviation of an average query completion time, a portion of the standard deviation of the average query completion time indicating an unacceptably long query time..." (Claim 1). At best, Asano discusses updating "new average response time[s]" of network components based upon "measured response times" of those network components. (Asano at paras. 48-49). Asano fails,

however, to contemplate using, "a standard deviation...a portion of the standard deviation... indicating an unacceptably long query time..." (Claim 1). As described in Applicants' original Specification, the "standard deviation" aids in determining a threshold of the "average query completion time." (Applicants' Specification at para. 28). Specifically, the standard deviation allows for "status component 26 [to indicate] the network resource is unavailable if a currently occurring query is taking an unacceptably long time..." (*Id.*). Asano neither discloses nor contemplates the use of a "standard deviation" as in claim 1. Accordingly, Applicants respectfully request withdrawal of the rejections.

Applicants further submit that neither Eden nor Peterson overcome the deficiencies of Asano, discussed herein. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 1 based upon combinations of Eden, Peterson and/or Asano.

With respect to claim 8, Applicants submit that the Office fails, *inter alia*, to show that the proposed combination of Eden, Peterson and/or Asano teaches or suggests, "[a] computer system..." that includes all the features claimed therein. For example, for reasons that should be clear from the discussion of the proposed combination of Eden, Peterson and/or Asano above, Applicants submit that the proposed combination of Eden, Peterson and/or Asano fails to teach or suggest the system of claim 8, including, "...a standard deviation of an average query completion time, a portion of the standard deviation of the average query completion time indicating an unacceptably long query time..." As a result, Applicants respectfully request withdrawal of the rejections of claim 8, as allegedly being unpatentable over Eden, Peterson and/or Asano.

With respect to claim 16, Applicants submit that the Office fails, *inter alia*, to show that the proposed combination of Eden, Peterson and/or Asano teaches or suggests, "[a] computer

program product ..." that includes all the features claimed therein. For example, for reasons that should be clear from the discussion of the proposed combination of Eden, Peterson and/or Asano above, Applicants submit that the proposed combination of Eden, Peterson and/or Asano fails to teach or suggest the computer program product of claim 16, including, "...a standard deviation of an average query completion time, a portion of the standard deviation of the average query completion time indicating an unacceptably long query time..." As a result, Applicants respectfully request withdrawal of the rejections of claim 16, as allegedly being unpatentable over Eden, Peterson and/or Asano.

With respect to claim 23, Applicants submit that the Office fails, *inter alia*, to show that the proposed combination of Eden, Peterson and/or Asano teaches or suggests, "[a] computer-implemented method ..." that includes all the features claimed therein. For example, for reasons that should be clear from the discussion of the proposed combination of Eden, Peterson and/or Asano above, Applicants submit that the proposed combination of Eden, Peterson and/or Asano fails to teach or suggest the computer-implemented method of claim 23, including, "...a standard deviation of an average query completion time, a portion of the standard deviation of the average query completion time indicating an unacceptably long query time..." As a result, Applicants respectfully request withdrawal of the rejections of claim 23, as allegedly being unpatentable over Eden, Peterson and/or Asano.

With respect to claim 31, Applicants submit that the Office fails, *inter alia*, to show that the proposed combination of Eden, Peterson and/or Asano teaches or suggests, "[a] system for deploying..." that includes all the features claimed therein. For example, for reasons that should be clear from the discussion of the proposed combination of Eden, Peterson and/or Asano above, Applicants submit that the proposed combination of Eden, Peterson and/or Asano fails to teach

or suggest the system for deploying of claim 31, including, "…a standard deviation of an average query completion time, a portion of the standard deviation of the average query completion time indicating an unacceptably long query time…" As a result, Applicants respectfully request withdrawal of the rejections of claim 31, as allegedly being unpatentable over Eden, Peterson and/or Asano.

The dependent claims are believed allowable for the same reasons stated above, as well as for their own additional features.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Examiner's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Examiner's analysis, combinations, and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Examiner's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

/Matthew B. Pinckney/

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Date: 4 June 2008

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